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DOMESTIC RELATIONS Adoption: Amend Chapter 8 of Title 19 of the Official Code of Georgia Annotated, Relating to Adoption, so as to Enact the “Option of Adoption Act”; Provide a Short Title; Define Certain Terms; Provide That a Legal Embryo Custodian May Relinquish Rights to an Embryo; Provide for Procedures; Provide That a Child Born As a Result of Such Relinquished Embryo Shall Be the Legal Child of the Recipient; Provide for an Expedited Order of Parentage; Amend the Official Code of Georgia Annotated so as to Conform Provisions and Correct Cross-

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DOMESTIC RELATIONS

Adoption: Amend Chapter 8 of Title 19 of the Official Code of Georgia Annotated, Relating to Adoption, so as to Enact the “Option of Adoption Act”; Provide a Short Title; Define Certain Terms; Provide That a Legal Embryo Custodian May Relinquish Rights to an Embryo; Provide for Procedures; Provide That a Child Born As a Result of Such Relinquished Embryo Shall Be the Legal Child of the Recipient; Provide for an Expedited Order of Parentage; Amend the Official Code of Georgia Annotated so as to Conform Provisions and Correct Cross-References; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 15-11-28 (amended); 19-8-26 (amended); 19-8-40, -41, -42, -43 (new); 29-2-22 (amended); 49-5-12 (amended)
BILL NUMBER:	HB 388
ACT NUMBER:	171
GEORGIA LAWS:	2009 Ga. Laws 171
SUMMARY:	The Act permits legal custodians of a human embryo to transfer their rights in the embryo to an intended parent before the transfer of that embryo. To effectuate the transfer of rights in the embryo and any resulting child, the Act requires that the legal custodians and the intended parent enter into a written contract before the embryo is transferred. When such a written contract is in place, the Act provides that a child resulting from the embryo transfer will be presumed to be the child of the intended parent and that parent may petition for an expedited order of adoption or parentage either before or after the child’s birth.

EFFECTIVE DATE: July 1, 2009

History

The availability of a wide variety of fertility treatments provides couples struggling with infertility many options to conceive.¹ Many women are finally able to conceive through the use of Assisted Reproductive Technologies, which includes *in vitro* fertilization (IVF).² Through this laboratory procedure, an oocyte (egg) from the intended mother is fertilized by sperm, and the resulting embryo is transferred to the uterus of the intended mother.³ The use of a donated embryo for the IVF process is an often-successful option for those women for whom conception using their own eggs is not possible.⁴ In this situation, the embryo donor enters into a contractual agreement with the intended recipient whereby she and her partner or husband relinquish their rights to any resulting child, and the intended recipient parents accept all responsibility for that child.⁵

When more viable embryos are produced through an IVF treatment cycle than can be used, the intended parents have the option of freezing these embryos for later use in a process known as cryopreservation.⁶ Should the persons undergoing IVF treatment not require these embryos, the embryos may be donated for adoption.⁷

1. Dep't of Health and Human Servs., Infertility—Frequently Asked Questions, <http://www.womenshealth.gov/faq/infertility.pdf> (last visited Aug. 17, 2009); see also Georgia Reproductive Specialists, Treatment Options, http://www.ivf.com/grs_treatment_options.php (last visited May 8, 2009).

2. Dep't of Health and Human Servs., *supra* note 1; see also Georgia Reproductive Specialists, In Vitro Fertilization Program, http://www.ivf.com/grs_treatment_options.php (last visited May 8, 2009).

3. Dep't of Health and Human Servs., *supra* note 1; see also Georgia Reproductive Specialists, In Vitro Fertilization and Embryo Transfer, <http://www.ivf.com/overview.html> (last visited May 8, 2009); Georgia Reproductive Specialists, Donor Egg Program, <http://www.ivf.com/donor.html> (last visited May 8, 2009) [hereinafter Donor Egg Program].

4. See Donor Egg Program, *supra* note 3.

5. Am. Fertility Ass'n., Handbook—Prospective Donors, http://www.theafa.org/pubs/AFA_Embryo_Donation_Donors.pdf (last visited Aug. 17, 2009). *E.g.*, Georgia Reproductive Specialists, Become an Egg Donor, http://www.ivf.com/grs_become_an_egg_donor.php (follow “Oocyte Donor/Prospective Parent Agreement” hyperlink) (last visited May 8, 2009).

6. Georgia Reproductive Specialists, Human Embryo Cryopreservation, <http://www.ivf.com/cryoperm.html> (last visited May 8, 2009).

7. *E.g., id.*

The donors typically enter into an agreement with their fertility clinic whereby the embryos are donated to the fertility clinic to be offered for anonymous adoption.⁸ Through this agreement, the donors relinquish all rights and claims to the “donated embryos or any pregnancy or offspring that might result from them.”⁹ Thus far, the donation of embryos for adoption by other couples has been effectuated through private agreements between the donors, the fertility centers, and the intended parents.¹⁰

To date in Georgia, adoption of a child may not take place until after the child is born.¹¹ Thus, litigation surrounding adoption proceedings has centered upon the validity of the termination of parental rights to a child after the child has been conceived and carried to term by the mother.¹² Some concern exists, however, regarding the potential for litigation resulting from an embryo donor’s assertion of parental rights over a child carried to term by one who adopted the embryo.¹³ Also, general concerns persist regarding custody battles involving cryopreserved embryos, likely furthered by reports of litigation over embryo custody in divorce suits.¹⁴ Further, a

8. *E.g., id.*

9. *E.g., id.*

10. *See, e.g., id.*

11. The state of Georgia requires that a parent or guardian complete a parental surrender of rights form to effectuate an adoption. This form states, in part: “I, the undersigned, being solicitous that my (male) (female) child, born (insert name of child) on (insert birthdate of child), should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.” O.C.G.A. § 19-8-26 (Supp. 2008); Video Recording of House Proceedings, Mar. 12, 2009 at 1hr., 13 min. (remarks by Rep. James Mills (R-25th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_129987579,00.html [hereinafter House Video].

12. *E.g., Rokowski v. Gilbert*, 620 S.E.2d 509, 511, 516, 518 (Ga. Ct. App. 2005) (finding the termination of a father’s parental rights to the infant daughter he conceived with his wife, and whom she carried to term, was valid and the mother’s consent to adoption and relinquishment of parental rights was also proper); *In re Stroh*, 523 S.E.2d 887, 889–90, 893 (Ga. Ct. App. 1999) (holding a mother’s voluntary relinquishment of her parental rights to her infant daughter to the adoptive parents was valid); *see also Johnson v. Smith*, 302 S.E.2d 542, 543 (Ga. 1983); *In re A.N.M.*, 517 S.E.2d 548, 552–53 (Ga. Ct. App. 1999); *Lee v. Stinger*, 441 S.E.2d 861, 863 (Ga. Ct. App. 1994).

13. House Video, *supra* note 11, at 1 hr., 13 min. (remarks by Rep. James Mills (R-25th)).

14. *E.g., Davis v. Davis*, 842 S.W.2d 588, 600–02 (Tenn. 1992) (awarding custody of cryopreserved embryos to the husband in a divorce suit to preserve his constitutional right to avoid procreation); *Roman v. Roman*, 193 S.W.3d 40, 54 (Tex. App. 2006) (upholding the validity of an pre-divorce agreement dictating the disposition of cyropreserved embryos generated during the marriage); *Litowitz v. Litowitz*, 48 P.3d 261 (Wash. 2002) (reversing the appellate court’s decision awarding the husband

Georgia General Assembly Study Committee report recommended that “the General Assembly introduce legislation amending Georgia’s current adoption law to allow for embryo adoption.”¹⁵

Bill Tracking of House Bill (HB) 388

Consideration and Passage by the House

Representatives James Mills (R-25th), Melvin Everson (R-106th), Jerry Keen (R-179th), Ben Harbin (R-118th), Len Walker (R-107th), and Ed Setzler (R-35th), respectively, sponsored HB 388.¹⁶ The House of Representatives read the bill for the first time on February 11, 2009, and for the second time the following day.¹⁷ Speaker of the House Glenn Richardson (R-19th) assigned it to the House Committee on Judiciary.¹⁸ The bill, as originally introduced, would have changed the definition of “child” to include a human embryo and would have established procedures in adoption law to permit embryo adoptions so as to clarify the status of embryos placed for adoption as children.¹⁹

The House Committee on Judiciary amended HB 388 to include amendments to Chapter 8 of Title 19 of the Official Code of Georgia Annotated. The Committee designated the existing chapter relating to current adoption proceedings as “Article 1” and added the Option of Adoption Act under “Article 2.” Because the existing adoption proceedings were designated under Article 1, the Committee added Sections 3, 4, 5, and 6 to correct cross-references that referred to the original adoption proceedings. The Committee then added Code section 19-8-41 to require the creation of a legal document to transfer

custody of embryos created using his sperm and donor eggs, based upon pre-divorce contractual agreements).

15. House Video, *supra* note 11, at 1 hr., 17 min. to 1 hr., 22 min. (remarks by Rep. James Mills, quoting Georgia General Assembly Study Committee report).

16. See HB 388, as introduced, 2009 Ga. Gen. Assem.

17. State of Georgia Final Composite Status Sheet, HB 388, Apr. 3, 2009.

18. *Id.*

19. House Video, *supra* note 11, at 1 hr., 13 min. (remarks by Rep. James Mills).

the adoption rights,²⁰ Code section 19-8-42 to create the legal proceeding whereby the superior court would issue an optional final order transferring the parental rights of the embryo from the donor to the donee,²¹ and Code section 19-8-43 to define the legal effect of the court's order.²² Upon the request of respected lawyers in the fields of assisted reproductive technology and adoption,²³ the Committee amended the definition of "embryo" or "human embryo" to exclude the language "from the single-cell stage to eight-week development" so that the definition merely stated "an individualized ovum of the human species."²⁴ The duration was eliminated because embryo transfer generally occurs between two and five days, and the language "eight-week development" appeared unnecessary and misleading.²⁵

The House Committee on Judiciary favorably reported HB 388 on March 9, 2009.²⁶ HB 388 was read for the third time on March 12, 2009.²⁷ On that same day, the House of Representatives passed HB 388 by a vote of 96 to 66.²⁸ On April 1, 2009, after the Senate passed the bill by substitute and with amendments by a vote of 45 to 9, the House passed the bill as amended by the Senate by a vote of 108 in favor and 61 in opposition.²⁹

Consideration and Passage by the Senate

The Senate read HB 388 for the first time on March 12, 2009. Senate President Pro Tempore Eric Johnson (R-1st) referred it to the Senate Judiciary Committee. The Senate Judiciary Committee made only two changes. First, the committee clarified the definition of the

20. Video Recording of House Committee on Judiciary, Mar. 6, 2009 at 25 min., 18 sec. (remarks by Rep. Mike Jacobs (R-80th)), http://media.legis.ga.gov/hav/09_10/comm/judy/judi030609.wmv [hereinafter House Committee Video].

21. House Committee Video, *supra* note 20, at 25 min., 28 sec. (remarks by Rep. Mike Jacobs).

22. *Id.*

23. *Id.* at 1 hr., 8 min., 59 sec. (remarks by Sara Clay, Esq.).

24. *Id.*

25. *Id.* at 42 min., 04 sec. (remarks by Sara Clay, Esq.).

26. State of Georgia Final Composite Status Sheet, HB 388, Apr. 3, 2009.

27. *Id.*

28. Georgia House of Representatives Voting Record, HB 388 (Mar. 12, 2009).

29. Georgia House of Representatives Voting Record, HB 388 (Apr. 1, 2009).

term “embryo” within proposed Code section 19-8-40 to limit use of the term only to embryos within eight weeks of fertilization,³⁰ adding back into the definition portions that were omitted earlier.³¹ This change was made by the Senate Judiciary Committee at the request of the bill sponsor, Representative Mills, to provide a clear definition of the scope and application of the term “embryo.”³² This change was made to clarify the scope of the Option of Adoption Act and to ensure that the commonly accepted use of the term “embryo” would be carried forward in the legislation.³³

Second, the committee clarified the reach of a court order of adoption within the proposed Code section 19-8-43 to preclude any claim of parental rights from any prior legal custodian—including the gamete donor—over the resultant child and to preclude any claim of parental responsibility from the resulting child against any prior custodian, including the gamete donor.³⁴ This change was intended to prevent the chilling effect that an assertion of child support rights would have on gamete donors, which are acknowledged as an essential element to the IVF process,³⁵ and to ensure that a resultant child and its adopted family would not fear an assertion of parentage by a prior custodian or donor.³⁶

The Senate Judiciary Committee favorably reported its substitute to HB 388 on March 30, 2009, and the bill was read before the Senate for the second time on the same day. On April 1, 2009, after a third read in the Senate, HB 388 was passed by the Senate and sent to the House of Representatives for approval. As mentioned, the House of Representatives passed the Senate substitute on April 3, 2009.

The bill was sent to Governor Sonny Perdue on April 14, 2009.

30. “‘Embryo’ or ‘human embryo’ means an individual fertilized ovum of the human species *from the single-cell stage to eight-week development*.” O.C.G.A. § 19-8-40(1) (Supp. 2009) (emphasis added).

31. See *supra* notes 24–25 and accompanying text.

32. See Interview with Sen. Preston Smith (R-52nd) (May 6, 2009) [hereinafter Smith Interview].

33. *Id.*

34. “Such order shall terminate any future parental rights and responsibilities of any past or present legal embryo custodian *or gamete donor* in a child which results from the embryo transfer and shall vest such rights and responsibilities in the recipient intended parent.” O.C.G.A. § 19-8-43 (Supp. 2009) (emphasis added).

35. See Smith Interview, *supra* note 32.

36. *Id.*

The Act

The Act amends Chapter 8 of Title 19 to allow legal custodians of a human embryo to transfer their rights in the embryo to an intended parent before the transfer of that embryo.³⁷

Section 1 provides the short title of this Act to be “Option of Adoption Act.”³⁸

Section 2 amends Chapter 8 of Title 19 of the Code by designating the existing chapter as Article 1.³⁹ This section of the Act adds the new Code section 19-8-40, which sets forth the definitions of key terms used in the article.⁴⁰ The key terms include: embryo, human embryo, embryo relinquishment, embryo transfer, legal embryo custodian, and recipient intended parents.

Section 2 also adds Code section 19-8-41, which sets forth the process of the contractual embryo transfer and its effect.⁴¹ Subsection (a) delineates the process whereby a legal embryo custodian may relinquish the rights and responsibilities for an embryo to a recipient intended parent prior to embryo transfer.⁴² To transfer the rights to an embryo and to any child that may result from that embryo transfer, each legal embryo custodian and recipient intended parent must enter into a written contract prior to the embryo transfer.⁴³ This contract may include a written waiver by the legal embryo custodian of notice and service of any future legal adoption or other parentage proceeding.⁴⁴ This contract must be signed in the presence of a notary public and a witness, but initials and other designations are permitted to preserve anonymity.⁴⁵

Subsection (b) removes the gamete donors’ rights to notice of the embryo relinquishment and the need for consent from gamete donors to the embryo relinquishment.⁴⁶

37. O.C.G.A. §§ 19-8-40 to -43 (Supp. 2009).

38. *Id.*

39. *Id.* §§ 19-8-1 to -26.

40. *Id.* § 19-8-40.

41. *Id.* § 19-8-41.

42. *Id.*

43. O.C.G.A. § 19-8-41 (Supp. 2009).

44. *Id.*

45. *Id.*

46. *Id.* § 19-8-41.

Subsections (c) and (d) reinforce subsection (a). These sections clarify that a signed written contract pursuant to subsection (a) authorizes the embryo transfer such that a child born to a recipient intended parent is presumed to be the legal child of the recipient intended parent.⁴⁷ The legal embryo custodian has thus completely relinquished the legal right to the embryo and to any child resulting from the embryo transfer.

Section 2 also adds Code section 19-8-42, which permits a recipient intended parent the option to adopt either prior to or following the birth of a child.⁴⁸ Subsection (a) directs the recipient intended parent to petition the superior court for an expedited order of adoption or parentage, should she desire to do so.⁴⁹ The recipient intended parent may present the written contract between the legal embryo custodian and the recipient intended parent in lieu of a surrender of rights.⁵⁰ Subsection (b) then directs the recipient intended parent to file the petition in the county in which she lives.⁵¹ Subsection (c) directs the superior court to give effect to any written waiver of notice and service for the adoption or parentage proceeding.⁵² Subsection (d) permits the superior court to waive technical requirements as it sees just and proper.⁵³

Last, Section 2 adds Code section 19-8-43, which permits the court to issue an expedited order of adoption or parentage pursuant to the requirements of this article.⁵⁴ When issued, this final order terminates all future parental rights and responsibilities of all past and present legal embryo custodians or gamete donors in a child that results from the embryo transfer.⁵⁵ The parental rights and responsibilities are then vested in the recipient intended parent.

47. *Id.*

48. *Id.* § 19-8-42.

49. O.C.G.A. § 19-8-42 (Supp. 2009).

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* § 19-8-43.

55. O.C.G.A. § 19-8-43 (Supp. 2009).

Sections 3, 4, 5, and 6 amend Code sections 15-11-28, 19-8-26, 29-2-22, and 49-5-12, respectively.⁵⁶ Because Section 2 created the new “Article 2” within Chapter 8 of Title 19 of the Code and designated the preexisting chapter as Article 1, Code sections that previously referred to “Chapter 8 of Title 19” had to be amended to refer instead to “*Article 1 of Chapter 8 of Title 19.*”⁵⁷

Analysis

HB 388⁵⁸ provides the procedure to facilitate the transfer of legal rights to an embryo. The bill was introduced⁵⁹ to avoid litigation between the embryo donor and the recipient intended parent and to determine the adoptive status of the child before birth.⁶⁰ The Option of Adoption Act attempts to foster and encourage *in vitro* fertilization (IVF)⁶¹ and donation of embryos by (1) providing recipients of donated embryos with the option of adopting the embryo before the birth of the child, and (2) by preventing children resulting from IVF from requiring parental responsibilities of the donor (such as child support).⁶² The Act allows judicial orders of adoption or parentage only as an option and not as a mandated process for the transfer of embryo parentage rights.⁶³ The process prescribed by the Act provides an easy and predictable method of obtaining a legal presumption of parentage.⁶⁴ Although this process is not technically “adoption” of a “child” in the traditional sense, the procedure that the Act prescribes effectuates the transfer of parental rights in a child resulting from IVF.⁶⁵

56. *Id.* §§ 15-11-28, 19-8-26, 29-2-22, 49-5-12.

57. Emphasis added.

58. House Bill 388 is also known as the Option of Adoption Act. O.C.G.A. §§ 19-8-40 to -43 (Supp. 2009).

59. HB 388 was read for the first time on February 11, 2009, in the House of Representatives. *See* State of Georgia Final Composite Status Sheet, HB 388, Apr. 3, 2009.

60. House Video, *supra* note 11, at 1 hr., 13 min. (remarks by Rep. James Mills (R-25th)).

61. *Id.* at 1 hr., 22 min. (remarks by Rep. James Mills and Rep. Edward Lindsey (R-54th)).

62. *See infra* notes 70–76 and accompanying text.

63. *See infra* notes 77–80 and accompanying text.

64. *See infra* notes 81–89 and accompanying text.

65. *See infra* notes 90–95 and accompanying text.

The sponsors of the Act worked extensively with leading adoption and domestic lawyers in Georgia⁶⁶ to create this “pro-family piece of legislation.”⁶⁷ The Option of Adoption Act is an attempt for legislation to catch up with technology so that potential disputes regarding embryo transfer may be resolved with certainty.⁶⁸ The final product helps clarify the rights of both the embryo donors and the adoptive parents and provides finality in the transfer of parental rights and obligations.⁶⁹

Promote Embryo Donation for Adoption

Proponents of this Act believe that it will help erase additional barriers to couples already challenged with infertility.⁷⁰ There are a great number of Georgia couples who view IVF as the only solution to their fertility problems.⁷¹ Since the late 1970s, at least 500,000 human embryos have been cryogenically stored in the United States.⁷² An estimated 40,000 human embryos are currently being cryogenically preserved within Georgia.⁷³ This Act will encourage people to donate for procreation and will provide security to people who adopt the donated embryos by providing finality in the process.⁷⁴ If the recipient of an implanted embryo so chooses, she may attain security and legal clarity through this Act’s provision of an option to petition the superior court for a final order of adoption or parentage.⁷⁵ The Act also protects donors by ensuring that any possible claim by

66. House Video, *supra* note 11, at 1 hr., 22 min. (remarks by Rep. James Mills and Rep. Edward Lindsey).

67. *Id.* at 1 hr., 44 min. (remarks by Rep. Mike Jacobs (R-80th)).

68. Michael Foust, *Georgia May Pass Nation’s 1st Embryo Adoption Law*, CHRISTIAN INDEX, Mar. 26, 2009, <http://www.christianindex.org/5306.article>.

69. Daniel Becker, *Georgia House Passes HB 388: Nation’s First Embryo Adoption Bill*, CHRISTIAN NEWswire, Mar. 12, 2009, <http://www.christiannewswire.com/news/380319719.html>.

70. See Interview with Mary Beth Pierucci, Director of Public Policy at Planned Parenthood of Georgia (Apr. 21, 2009) [hereinafter Pierucci Interview].

71. House Video, *supra* note 11, at 1 hr., 27 min. (remarks by Rep. James Mills).

72. Becker, *supra* note 69.

73. Steven Ertelt, *Georgia’s First-in-Nation Embryo Adoption Bill Heads to Governor Sonny Perdue*, LIFENEWS.COM, Apr. 5, 2009, <http://www.lifenews.com/bio2817.html>.

74. See Interview with Ruth Claiborne, Esq., of Claiborne, Outman & Surmay, P.C. (Apr. 27, 2009) [hereinafter Claiborne Interview].

75. See Pierucci Interview, *supra* note 70.

the resultant child of parental responsibility on the part of the donor will be legislatively precluded.⁷⁶

Merely an Option, Not a Mandate

Throughout the legislative process, sponsors of this Act have consistently reminded members of the legislature that this Act merely provides an *option* to the recipient intended parents.⁷⁷ The focus of the Act is to provide intended recipient parents with the *choice* to adopt.⁷⁸ Nothing in the Act requires the recipient to petition the court for a final order of adoption or parentage. If recipients do not want to take this option, they are under no obligation to do so.⁷⁹ They have the choice to continue under existing law, which transfers the legal rights to an embryo from donor to recipient through contract, not a final court order.⁸⁰

Simplify the Method of Obtaining Legal Presumption of Parentage

Before this Act, Georgia did not recognize pre-birth adoptions.⁸¹ A donor parent could challenge the parentage of the donor embryo, even after the recipient of the donated embryo carried the child full term.⁸² Because this issue of parentage remained unresolved, both the donor and recipient would have to litigate this issue in court.⁸³ This situation is especially likely to occur if the embryos were donated in a volatile situation or if the recipients of the implanted embryo planned

76. See Smith Interview, *supra* note 32.

77. House Video, *supra* note 11, at 1 hr., 13 min. (remarks by Rep. James Mills); *id.* at 1 hr., 27 min. (remarks by Rep. Tom Weldon (R-3rd)); *id.* at 1 hr., 31 min. (remarks by Rep. Fran Millar (R-79th)); *id.* at 1 hr., 44 min. (remarks by Rep. Mark Jacobs); Video Recording of Senate Proceedings, Apr. 1, 2009 at 3hr., 6 min. (remarks by Sen. David Shafer (R-48th)).

78. House Video, *supra* note 11, at 1 hr., 27 min. (remarks by Rep. James Mills and Rep. Tom Weldon).

79. *Id.* at 1 hr., 16 min. (remarks by Rep. James Mills).

80. *Id.* at 1 hr., 44 min. (remarks by Rep. Mark Jacobs); *id.* at 1 hr., 16 min. (remarks by Rep. James Mills).

81. *Id.* at 1 hr. 13 min. (remarks by Rep. James Mills).

82. *Id.*

83. *Id.*

on moving to a state where an order of adoption would be better recognized.⁸⁴

Before the Option of Adoption Act, donor parents could challenge the parentage of the recipient parents because the embryo transfer was effected by contract.⁸⁵ Although binding, contracts are subject to interpretation, dispute, and ultimately litigation.⁸⁶ Under the Option of Adoption Act, however, the intended recipient parent has the option of petitioning the superior court in the county where he or she resides for an expedited order of adoption or parentage. This court order vests parental rights in the receiving parents and provides both parties with legal clarity.⁸⁷ Hereinafter, a pregnant mother receiving a donated embryo can carry a child to full term without fear that the donor parent will attempt to re-claim parentage at a later date.⁸⁸ This Act provides the recipient with an option to foreclose future litigation regarding this issue. In short, this Act provides both the donors and recipients an “added level of comfort” knowing that the transfer is finalized by a final court order.⁸⁹

Controversial Usage of “Adoption”

The Option of Adoption Act uses the term “adoption” to refer to the process it creates under Article 2 of Chapter 8 of Title 19 of the Georgia Code.⁹⁰ But parties interested in HB 388 have expressed concern regarding the use of the term, “adoption,”⁹¹ for several reasons. First, the use of this term could imply that an embryo would be regarded as a child,⁹² although the explicit provision to elevate the status of an embryo to that of a child was removed from HB 388.⁹³ Second, the procedure as described under the Option of Adoption Act

84. See Claiborne Interview, *supra* note 74.

85. House Video, *supra* note 11, at 1 hr., 44 min. (remarks by Rep. Mark Jacobs).

86. *Id.*

87. *Id.*; see Claiborne Interview, *supra* note 74.

88. House Video, *supra* note 11, at 1 hr., 13 min. (remarks by Rep. James Mills).

89. Foust, *supra* note 68.

90. This Note uses the term “adoption” to refer to the procedure defined in the Option of Adoption Act.

91. See Claiborne Interview, *supra* note 74; Pierucci Interview, *supra* note 70.

92. See Claiborne Interview, *supra* note 74; Pierucci Interview, *supra* note 70.

93. See *supra* note 19 and accompanying text.

contains far fewer requirements to embryo transfer than would be required under a traditional adoption and contains fewer safeguards in the parental right transfer.⁹⁴ Thus, if the term “adoption” is used, these commentators would prefer that it refer exclusively to the process of transferring parental rights to a child that has already been born. But the term “adoption” is generally ambiguous because it is generally difficult to define any distinction in the terminology regarding human life.⁹⁵ No matter the term used, the Option of Adoption Act remains the same: it is a self-contained procedure for attaining unambiguous parental rights in a child resulting from a donated embryo.

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94. See Claiborne Interview, *supra* note 74; Pierucci Interview, *supra* note 70.

95. See Smith Interview, *supra* note 32.